



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R09-OAR-2015-0807; FRL-9951-19-Region 9]**

#### **Approval of California Air Plan Revisions, Department of Pesticide Regulations**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve revisions to the California Department of Pesticide Regulations (CDPR) portion of the California State Implementation Plan (SIP). These revisions concern emissions of volatile organic compounds (VOCs) from pesticides. The overall purpose of the new and revised regulations is to restrict the use of certain nonfumigant pesticide products applied to certain crops in the San Joaquin Valley ozone nonattainment area when VOC emissions meet or exceed 95% of the 18.1 tons per day limit on VOC emissions, or 17.2 tons per day. The rules establish limits on the sale and use of high-VOC formulations of nonfumigant pesticide products that contain any of four specified primary active ingredients for use on seven specified crops grown in the San Joaquin Valley. We are approving these rules that regulate these emission sources under the Clean Air Act (CAA or the Act).

**DATES:** These rules will be effective on [**Insert date 30 days after the date of publication in the Federal Register**].

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2015-0807. All documents in the docket are listed on the <http://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Nancy Levin, EPA Region IX, (415) 972-3848, [levin.nancy@epa.gov](mailto:levin.nancy@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to the EPA.

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## **I. Proposed Action**

On February 8, 2016 (81 FR 6481), the EPA proposed to approve the following rules into the California SIP.

Local Agency	Rule #	Rule Title	Adopted/ Amended/ Revised	Submitted
CDPR	3 CCR 6452	Reduced VOC Emissions Field Fumigation Methods.	05/23/13	02/04/15
CDPR	3 CCR 6452.2	VOC Emission Limits.	05/23/13	02/04/15
CDPR	3 CCR 6558	Recommendations for Use of Nonfumigants in the San Joaquin Valley (SVJ) Ozone Nonattainment Area (NAA).	05/23/13	02/04/15
CDPR	3 CCR 6577	Sales of Nonfumigants for Use in the SVJ Ozone NAA.	05/23/13	02/04/15
CDPR	3 CCR 6864	Criteria for Identifying Pesticides as Toxic Air Contaminants.	05/23/13	02/04/15
CDPR	3 CCR 6880	Criteria to Designate Low-VOC or High-VOC Nonfumigant Pesticide Products.	05/23/13	02/04/15
CDPR	3 CCR 6881	Annual VOC Emissions Inventory Report.	05/23/13	02/04/15
CDPR	3 CCR 6883	Recommendation Requirements in the SVJ Ozone NAA.	05/23/13	02/04/15
CDPR	3 CCR 6884	SVJ Ozone NAA Use Prohibitions.	05/23/13	02/04/15
CDPR	3 CCR 6886	Dealer Responsibilities for the SVJ Ozone NAA.	05/23/13	02/04/15

The overall purpose of the new and revised regulations is to restrict the use of certain nonfumigant pesticide products applied to certain crops in the San Joaquin Valley ozone nonattainment area when VOC emissions meet or exceed 95% of the 18.1 tons per day limit on VOC emissions, or 17.2 tons per day. CDPR added or revised the rules specified above largely to establish limits on the sale and use of high-VOC formulations of nonfumigant pesticide products that contain abamectin, chlorpyrifos, gibberellins, or oxyfluorfen as their primary active

ingredient, for use on any of the following seven crops: alfalfa, almond, citrus, cotton, grape, pistachio, and walnut. We proposed to approve these rules because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

## **II. Public Comments and EPA Responses**

The EPA's proposed action provided a 30-day public comment period. During this period, we received one comment.<sup>1</sup> The commenter supported EPA approval of these rules because they are in line with California's efforts to reduce smog and improve the health of the environment, which improves the quality of life of its residents.

## **III. EPA Action**

No adverse comments were submitted. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving these rules into the California SIP.

## **IV. Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the California rules described in the amendments to 40 CFR part 52 set forth below. Therefore, these materials have been approved by EPA for inclusion in the State Implementation Plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable

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<sup>1</sup> See <http://www.regulations.gov>; Docket ID "EPA-R09-OAR-2015-0807-0076."

under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.<sup>2</sup> The EPA has made, and will continue to make, these documents available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region IX Office (please contact the person identified in the "**FOR FURTHER INFORMATION CONTACT**" section of this preamble for more information).

## V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

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<sup>2</sup> 62 FR 27968 (May 22, 1997)

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 9, 2016.

Alexis Strauss,  
Acting Regional Administrator,

## Region IX.



Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52 — APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart F - California**

2. Section 52.220a in paragraph (c), table 1, is amended by:

- a. Revising the entries for “6452” and “6452.2”;
- b. Removing the entry for “6452.4”;
- c. Adding a table entry titled “Title 3 (Food and Agriculture), Division 6 (Pesticides and Pest Control Operations), Chapter 3 (Pest Control Operations), Subchapter 1 (Licensing), Article 5 (Agricultural Pest Control Adviser Licenses)” after the entry for “6452.3”; and under it, adding an entry for “6558”;
- d. Adding a table entry titled “Title 3 (Food and Agriculture), Division 6 (Pesticides and Pest Control Operations), Chapter 3 (Pest Control Operations), Subchapter 1 (Licensing), Article 6 (Pest Control Dealer Licenses)” after the new entry “6558”; and under it, adding an entry for “6577”;
- e. Adding a table entry titled “Title 3 (Food and Agriculture), Division 6 (Pesticides and Pest Control Operations), Chapter 4 (Environmental Protection), Subchapter 2 (Air), Article 1 (Toxic Air Contaminants)” after the entry “6626”; and under it, adding an entry for “6864”; and
- f. Adding a table entry titled “Title 3 (Food and Agriculture), Division 6 (Pesticides and Pest Control Operations), Chapter 4 (Environmental Protection), Subchapter 2 (Air), Article 2

(Volatile Organic Compounds)” after the new entry “6864”; and under it, adding entries for “6880”, “6881”, “6883”, “6884”, and “6886”.

The additions and revisions read as follows:

**§ 52.220a Identification of plan - partial.**

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(c) \* \* \*

**TABLE 1--EPA-APPROVED STATUTES AND STATE REGULATIONS<sup>1</sup>**

State Citation	Title/Subject	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
<b>Title 3 (Food and Agriculture), Division 6 (Pesticides and Pest Control Operations), Chapter 2 (Pesticides), Subchapter 4 (Restricted Materials), Article 4 (Field Fumigant Use Requirements)</b>				
*	*	*	*	*
6452	Reduced Volatile Organic Compound Emissions Field Fumigation Methods	November 1, 2013	81 FR 6481, February 8, 2016	Amends previous version of rule approved at 77 FR 65294 (October 26, 2012). Amended rule adopted by the California Department of Pesticide Regulation on May 23, 2013. Submitted on February 4, 2015.
*	*	*	*	*
6452.2	Volatile Organic Compound	November 1,	81 FR 6481,	Amends previous

	Emission Limits	2013	February 8, 2016	version of rule approved at 77 FR 65294 (October 26, 2012). Amended rule adopted by the California Department of Pesticide Regulation on May 23, 2013. Submitted on February 4, 2015.
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<b>Title 3 (Food and Agriculture), Division 6 (Pesticides and Pest Control Operations), Chapter 3 (Pest Control Operations), Subchapter 1 (Licensing), Article 5 (Agricultural Pest Control Adviser Licenses)</b>				
6558	Recommendations for Use of Nonfumigants in the San Joaquin Valley Ozone Nonattainment Area	November 1, 2013	81 FR 6481, February 8, 2016	Adopted by the California Department of Pesticide Regulation on May 23, 2013. Submitted on February 4, 2015.
<b>Title 3 (Food and Agriculture), Division 6 (Pesticides and Pest Control Operations), Chapter 3 (Pest Control Operations), Subchapter 1 (Licensing), Article 6 (Pest Control Dealer Licenses)</b>				
6577	Sales of Nonfumigants for Use in the San Joaquin Valley Ozone Nonattainment Area	November 1, 2013	81 FR 6481, February 8, 2016	Adopted by the California Department of Pesticide Regulation on May 23, 2013. Submitted on February 4, 2015.
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<b>Title 3 (Food and Agriculture), Division 6 (Pesticides and Pest Control Operations), Chapter 4 (Environmental Protection), Subchapter 2 (Air), Article 1 (Toxic Air Contaminants)</b>				

6864	Criteria for Identifying Pesticides as Toxic Air Contaminants	November 1, 2013	81 FR 6481, February 8, 2016	Adopted by the California Department of Pesticide Regulation on May 23, 2013. Submitted on February 4, 2015.
<b>Title 3 (Food and Agriculture), Division 6 (Pesticides and Pest Control Operations), Chapter 4 (Environmental Protection), Subchapter 2 (Air), Article 2 (Volatile Organic Compounds)</b>				
6880	Criteria to Designate Low - Volatile Organic Compound (VOC) or High-VOC Nonfumigant Pesticide Products	November 1, 2013	<b>[insert date of publication in the <u>Federal Register</u>], [insert <u>Federal Register</u> citation]</b>	Adopted by the California Department of Pesticide Regulation on May 23, 2013. Submitted on February 4, 2015.
6881	Annual Volatile Organic Compound Emissions Inventory Report	November 1, 2013	<b>[insert date of publication in the <u>Federal Register</u>], [insert <u>Federal Register</u> citation]</b>	Amends and rennumbers previous version of rule approved at 77 FR 65294 (October 26, 2012) as 3 CCR § 6452.4. Amended and renumbered rule adopted by the California Department of Pesticide Regulation on May 23, 2013. Submitted on February 4, 2015.
6883	Recommendation Requirements in the San Joaquin Valley Ozone Nonattainment Area	November 1, 2013	<b>[insert date of publication in the <u>Federal Register</u>],</b>	Adopted by the California Department of Pesticide Regulation on May 23, 2013.

			<b><u>[insert Federal Register citation]</u></b>	Submitted on February 4, 2015.
6884	San Joaquin Valley Ozone Nonattainment Area Use Prohibitions	November 1, 2013	<b><u>[insert date of publication in the Federal Register], [insert Federal Register citation]</u></b>	Adopted by the California Department of Pesticide Regulation on May 23, 2013. Submitted on February 4, 2015.
6886	Dealer Responsibilities for the San Joaquin Valley Ozone Nonattainment Area	November 1, 2013	<b><u>[insert date of publication in the Federal Register], [insert Federal Register citation]</u></b>	Adopted by the California Department of Pesticide Regulation on May 23, 2013. Submitted on February 4, 2015.
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<sup>1</sup> Table 1 lists EPA-approved California statutes and regulations incorporated by reference in the applicable SIP. Table 2 of paragraph (c) lists approved California test procedures, test methods and specifications that are cited in certain regulations listed in table 1. Approved California statutes that are nonregulatory or quasi-regulatory are listed in paragraph (e).

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